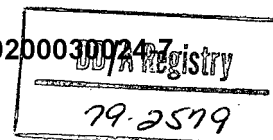


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3 AUG 1979

MEMORANDUM FOR: General Counsel

FROM : Don I. Wortman  
Deputy Director for Administration

SUBJECT : Office of Communications Comments on Proposed  
Title VI of the National Intelligence Act ☐

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1. Pursuant to discussions between representatives of the Office of Communications (OC) and ☐ of your Office, OC has undertaken to set out in specific terms its concern with certain sections of Title VI of the proposed National Intelligence Act. ☐

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2. Inasmuch as precedent and intent are major factors in the interpretation of the law, a brief historical perspective of the national communications security (COMSEC) program is a useful and perhaps necessary preface to a full appreciation of OC concern with the title. That history from 1968 to the present is sketched in paragraphs three through five below. ☐

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3. Contemporary national COMSEC policies have their roots in the National Security Council (NSC) Communications Security Directive of August 1968 (Attachment A). That directive established an issuance system of national COMSEC policies and procedures, some of which require community-wide coordination of certain COMSEC activities while others require coordination with NSA only. It was perceived by the CIA officers who participated in the formulation of the 1968 COMSEC Directive that it would be unwise to expose certain CIA COMSEC activities, particularly in the field of clandestine communications, to non-Agency elements. Consequently, the sentence, "The communications conducted by the Central Intelligence Agency in the performance of functions described in NSCID No. 5 are specifically exempted from this Directive." was added as the closing paragraph of the 1968 directive. That exemption allowed CIA to meet its national COMSEC policy obligations without jeopardizing the security of its clandestine operations.

THIS MEMORANDUM MAY BE DOWNGRADED TO CONFIDENTIAL UPON REMOVAL  
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25X1 Under the authority of the 1968 directive, the Agency provided secure communications systems ☐ to support DDO ☐ requirements. We also supplied COMSEC material to intelligence and security elements ☐ for counter-insurgency operations, covert action, and SIGINT collection programs in furtherance of national foreign policy objectives. In some of those cases, the COMSEC assistance was rendered in consultation with NSA and in other cases it was not. The significant point is that consultation was discretionary -- the Agency exercised the option to forego consultation when operational security considerations so dictated. ☐

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4. In November 1977, the 1968 COMSEC Directive was rescinded by Presidential Directive/NSC-24, and in June 1979 a new directive was issued by the Secretary of Defense. Although the Office of Communications vigorously opposed any change to the CIA exemption clause, the clause was drastically modified in the new directive and now limits our exemption "only to the extent set forth in a memorandum of understanding between the Central Intelligence Agency and the National Security Agency." NSA and the Department of Defense insisted on that change even though no such memorandum of understanding exists; although one has been under negotiation since October 1978. A copy of the NSA-drafted memorandum of understanding (MOU) appears as Attachment B. Attachment C is the CIA counterproposal which was submitted to NSA, and which OC understands through informal channels is not acceptable to NSA. It is important to note here that negotiations on the MOU began before the new directive was revised to limit our exemption authority to that set out in the MOU. Now, with the very limiting language of the directive, the MOU must be expanded far beyond the narrow topics of equipment development and use. ☐

25X1 5. It is the contention of OC that NSA and DoD insistence on narrowing the CIA exemption authority is just one in a series of steps whereby NSA calculates to exert far more oversight over CIA COMSEC activities and the COMSEC activities of other departments and agencies. Some other examples of recent NSA initiatives to that end are:

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a. NSA has circulated for coordination a proposed national COMSEC policy which would require field elements of departments and agencies to report certain communications insecurities directly to NSA. For CIA, the security implications of such a policy are far-reaching. OC has declined to coordinate on that policy.

b. NSA has attempted to prescribe biennial technical communications security inspections of overseas secure communications facilities. CIA does not have the monetary or manpower resources to sustain such an inspection schedule. Further, such a policy ignores qualitative factors such as the threat and vulnerability profile of each communications facility. Given the limited amount of Agency resources which can be dedicated to its COMSEC technical security inspection program, OC believes that it is far more cost effective to concentrate those resources on high risk facilities. Thus, posts like ☐ are inspected more frequently by OC than are posts like ☐

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6. Because the 1968 and 1979 COMSEC Directives require community coordination of policies such as those mentioned above, the Agency has always been in a position to block or argue for modification of COMSEC policies which it believes impractical or ill-advised. To the extent that any legislation gives NSA more sweeping authority for unilateral policy making, it will weaken or destroy that base of influence for the Agency. Title VI, then, appears to be the legal mandate which NSA is seeking to continue moving in the direction of increased COMSEC oversight and authority. That movement has obvious implications with respect to the DCI's continuing ability to protect Agency intelligence sources and methods and to exercise managerial control of his own COMSEC resources. ☐

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7. It has been said that the authorities which NSA attempts to assert in Title VI are merely consistent with NSA's delegated authority to act for the Secretary of Defense in his role as the Government's executive agent for COMSEC. That does not seem to OC to be necessarily so. Admittedly, OC finds no authoritative source which defines the scope of authority of an executive agent for the Government, however, some intended boundaries may be inferred from a reading of PD/NSC-24 which revalidated the appointment of the Secretary of Defense as the Government's Executive Agent for COMSEC. Paragraph 4.a of PD/NSC-24 reads in part:

"The heads of all departments and agencies of the Federal Government shall organize and conduct their communications security and emanations security activities as they see fit subject to the provisions of law, the provisions of this and other applicable directives, and decisions of the Subcommittee."

The subcommittee referred to in the above quotation is the NSC/SCC Subcommittee on Telecommunications Protection. Further, the new COMSEC directive signed only last month by the Secretary of Defense states that:

"This Directive does not give the Secretary of Defense, the Committee or any of its members, or the Director of the National Security Agency the authority to inspect any department or agency without the approval of the head of the department or agency."

and

"Departments and agencies may not be required to disclose to the Secretary of Defense, the Committee or any of its members or the Director, National Security Agency, the contents of any official communications if, in the opinion of the head of the department or agency, disclosure would be contrary to the national interest."

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In the view of OC, such cautious language can hardly be interpreted as a mandate for NSA to assert a greater degree of COMSEC oversight than it has historically exercised. Moreover, Executive Order 12036, the basis for the National Intelligence Act, implies no such mandate. ☐

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8. With that background in mind, OC offers these comments on certain passages of Title VI as drafted:

a. Section 613(a)14 - This section would give NSA review authority for proposed programs, budgets, and resource allocations for the COMSEC activities of the United States Government. OC perceptions of this passage are:

- o It establishes an undesirable precedent for outside review of CIA programs and resources by another agency.
- o It speaks only to the matter of review and leaves open to question whether NSA intends to or has the authority to direct program or budgetary changes. Unless NSA is given that authority - and it should not be - there is no justification for it to have review authority. Review for its own sake is meaningless and contrary to the need-to-know concept which applies throughout government.
- o The pace of the program and budget submission schedule is such that an additional review step could not be interjected without altering the cycle.
- o Most of the Agency's COMSEC program is contained in one of eight resource packages which make up a decision unit known as "Other Communications Activities." The COMSEC resource package could not be meaningfully reviewed in isolation from the other seven resource packages, and any changes to the COMSEC package would impact the other resource packages as well as the entire decision unit. Further, a full understanding of the Agency's total COMSEC resource

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program would require access to the entire telecommunications budget. That same concern would extend to DDO and DDS&T programs and budgets with respect to any COMSEC-related matters therein.

- ④ The language which refers to the preparation of a consolidated budget is ambiguous. We would choose to interpret it as giving NSA the responsibility to prepare a consolidated COMSEC program and budget for all DoD entities only, but there appears to be room to interpret it to mean that NSA would prepare a consolidated program and budget for the entire U.S. Government. Such a process would take away DCI control of CIA COMSEC resources and would not be consistent with good management practices.

Recommended Change: In line 3 of the section, change the words "United States Government" to "Department of Defense."

b. Section 613(c) - This section would require heads of departments and agencies to furnish the Director, NSA within applicable law, "such data as the Director may require." OC comments that:

- ④ The language is so broad that it allows the Director, NSA to request virtually any information which can be shown to have some COMSEC connection. Some hypothetical but plausible scenarios are: NSA could ask for information about all CIA facilities which use cryptographic equipment; it could request specific operational information in order to validate CIA selection of a cryptosystem to support a given staff or clandestine operational requirement; or, it could request information on COMSEC aspects of programs which are compartmented even within the Agency.
- ④ The CIA General Counsel has already expressed an opinion that the proposed language is too broad.

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Recommended Change: The Office of Communications would prefer to see the entire section deleted. Failing in that, the sentence, "The Director, CIA shall be exempt from this requirement when such disclosure is deemed by the Director, CIA to be contrary to the interest of protecting intelligence sources and methods." should be added.

c. Section 641(d) - This section provides for prior NSA review of clandestine SIGINT operations in support of clandestine activities and prior NSA review of COMSEC methods and procedures used in support of clandestine activities. OC perceives these very significant problem areas:

- o OC interprets clandestine SIGINT operations in support of clandestine activity to be the close support rendered directly to a Chief of Station or Base in support of his or her NSCID No. 5 functions. The exposure of such activities to NSA would unnecessarily expose CIA operations and CIA intelligence sources and methods.
- o The same unnecessary exposure would follow from an NSA review of COMSEC methods and procedures in support of clandestine activities.
- o It is noted again that review for its own sake is useless. Substantive review to validate qualitative or quantitative factors of COMSEC support to clandestine operations demands that the reviewing authority be informed on all relevant operational details.

Recommended Change: OC would prefer to see the entire section stricken; however, all CIA elements concerned with this passage have already agreed to compromise language which proposes to substitute the phrase "in coordination with" for the phrase "after review by" wherever the latter appears. This compromise language has been formally presented to NSA, however, OC understands that it is unacceptable to NSA. If that is indeed the case, OC wishes to withdraw the proffered change and work for removal of the entire section. ☐

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9. In summary, it is the OC position that the offensive passages of the proposed Title VI represent management and security concerns of such a magnitude that the Agency must work forcefully to have them modified or removed. If it is necessary to do so, the issues should be brought before the DCI along with a recommendation that he place them before the NSC Special Coordinating Committee for resolution. ☐

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10. It is my understanding that the DDS&T and the DDO share many of the same concerns with Title VI as we in the Directorate of Administration have, and that these directorates are submitting issue papers for your consideration. ☐

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/s/ C. D. May

*for* Don I. Wortman

Attachments:

- A. NSC COMSEC Directive of 1968
- B. NSA-drafted MOU on COMSEC Equipment Development and Use
- C. CIA-drafted MOU on COMSEC Equipment Development and Use

cc: OSO w/o atts  
OTS w/o atts  
DDO/PCS w/o atts

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Director of Communications

1 AUG 1979

Date

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